shares—in that state of the facts, if the company were to proceed to allot shares to a shareholder who relied on Mr Scrafton's name in the knowledge that Mr Scrafton no longer intended to be a director, I must say, that whatever may have been their original position they were certainly inducing him to go on and complete a contract under material error as to a matter affecting the constitution of the company. It is no answer to say that at the time when they signed the prospectus the promoters believed Mr Scrafton was to join them. The truth is, that at the time when the contract was completed Mr Blakiston was under essential error, and that was induced by the neglect of the promoters of the company to give him notice of the change of circumstances that had taken place.

As regards the second point, the materiality of the change of matters consequent on Mr Scrafton's withdrawal, I think that it must always be a material circumstance to a person who intends to subscribe to a company, that in a statement submitted to him there is a guarantee for good administration by a board of directors, consisting of men of substantial financial position and business capacity. In one of the cases cited the observation is made with which I agree, that the names of the directors would generally be the first thing that is looked at by anyone who thinks at all of subscribing to a company. Now, I think that the illustration given in the case of *Chadwick* of a person induced to take shares in reliance on the names of one of the two leading financial houses in the world, is not to be taken as a normal case of what was meant by the learned Judge, but rather as an extreme illustration. It does appear to me that a party seeking to invest in a new company may very well rely on the circumstance that the list of directors contains a name which he knows as the name of a firm of established reputation—such a firm as we have here, of millers who have six mills in six of the principal towns of Durham and the north of Yorkshire, and which is known to be an established firm. The fact that a director is a partner of that firm might very well be considered a material element by someone who was not personally acquainted with him, but who merely looks to his known reputation. People entrust the conduct of their business and the treatment of their ailments to professional persons on no other ground than that they know these names as the names of leading men in their professions, and therefore I think there is nothing in the statement of Mr Blakiston that is at all improbable, and certainly there is no contradiction of his statement that he did in fact rely on Mr Scrafton's name, and would not have made the application for shares but for the circumstance that he or someone of like reputation, known to him to be a man of business habits and capacity, was on the list of directors.

Now, the result of these considerations is, that in my view of the case the promoters of the company were not entitled to proceed with the allotment, so far as Mr Blakiston was concerned, after having received notice of Mr Scrafton's withdrawal. They might if they pleased have adjourned the allotment, and might have tried to satisfy Mr Scrafton; but supposing they failed to do so, or supposing they did not choose to apply to him again, then their clear duty was to intimate to all applicants for shares this change in the constitution of the company. It was all the more necessary that they should do so seeing that, as I have pointed out already, in a recent statute applicants could hold those who subscribed the prospectus as guarantors of the statements contained in it.

I am therefore of opinion with your Lordships that the petitioner is entitled to have his name taken off the register.

The LORD PRESIDENT concurred.

The Court granted the petition.

Counsel for the Petitioner—C. S. Dickson—Cullen. Agents—J. & A. F. Adam, W.S.

Counsel for Respondents—Jameson—Guy. Agent—George A. Munro, S.S.C.

Thursday, January 25.

SECOND DIVISION.

[Sheriff of Inverness.

MACKENZIE *v.* CAMERON.

Crofter—Succession—Bequest of Holding—"Member of Same Family"—Landlord's Objection—Crofters Holdings (Scotland) Act 1886 (49 *and* 50 *Vict. c.* 29), *sec.* 16.

The Crofters Act, sec. 16, provides—A crofter may by will or other testamentary writing bequeath his right to his holding to one person being a member of the same family—that is to say, his wife or any person who, failing nearer heirs, would succeed to him in case of intestacy (hereinafter called the legatee), subject to the following provisions—(*a*) Intimation of the bequest within twenty-one days to the landlord or his agent. . . . (*c*) Objections to receive by landlord within one month of intimation. (*d*) If the landlord or his known agent intimates that he objects to receive the legatee as crofter in the holding, the legatee may present a petition to the Sheriff praying for decree, declaring that he is the crofter therein as from the date of the death of the deceased crofter, of which petition due notice shall be given to the landlord, who may enter appearance and state his ground of objection, and if any reasonable ground of objection is established to the satisfaction of the Sheriff, he shall declare the bequest to be null and void, but otherwise he shall decern and declare in terms of the prayer of the petition; (*e*) the decision of the Sheriff under such petition as aforesaid shall be final," Provided always

that in the case of any legatee or heir-at-law more distant than wife, son, grandson, daughter, grand-daughter, brother, or son-in-law, it shall be competent to the landlord, on his own part or on the part of neighbouring crofters, to represent that for the purpose of enlarging their holding or holdings the holding ought to be added to them.

A deceased crofter left a settlement by which he bequeathed his whole interest in his croft to the son of his mother's sister. *Held* that the legatee was not a member of the same family as the deceased within the meaning of the Crofters Act, and that he had no claim to succeed to the occupation of the croft under the deceased's settlement.

Opinions (*per* Lord Young and Lord Trayner) as to the competency of appeal from the Sheriff's decision in such a case.

At the passing of the Crofters Holdings (Scotland) Act 1886 Duncan M'Innes was the holder of a small croft situated at North Ballachulish, in the parish of Kilmallie, on the property of Cameron of Lochiel. He died upon 9th May 1892.

He left a general disposition and settlement dated 27th August 1891. This settlement contained a special conveyance of the testator's whole right, title, and interest in and to his croft in favour of John M'Kenzie, crofter and tailor at North Ballachulish, his cousin, the son of his mother's sister.

Upon 17th May 1892, being within twenty-one days of the testator's death, M'Kenzie intimated the testamentary bequest to the landlord in terms of the Crofters Holdings Act.

Upon 26th May 1892 Lochiel's factor wrote to M'Kenzie that Lochiel could not receive him as occupier of the croft, on the ground that he was not the heir of the deceased within the meaning of the Crofters Act, and so could not inherit the croft under the will in his favour.

M'Kenzie brought an action in the Sheriff Court at Fort-William against Lochiel, to have it declared that he was the crofter of and in this croft as from 9th May 1892 by virtue of M'Innes's general disposition and settlement, and of the provisions of section 16 of the Crofters Holdings Act.

The defender pleaded — "(1) No title to sue. (8) The pursuer not being of the same family as the said Duncan M'Innes—that is, not being a person who, failing nearer heirs, would succeed to the said Duncan M'Innes in case of intestacy, he is not entitled to the bequest in his favour. (9) In any event, the pursuer not being within the degrees of relationship specified in the last paragraph of section 16 of the Crofters Holdings (Scotland) Act 1886, and the defender having represented to the Court that the croft should be enlarged by adding it to the croft of the neighbouring crofter David Colquhoun, the present petition should be refused."

Upon 23rd October 1893 the Sheriff-Substitute (BAILLIE) pronounced this interlocutor—"Finds that Duncan M'Innes, a crofter, who died on 9th May 1892, bequeathed, *inter alia*, his right to his holding to the pursuer, and that the pursuer was related to the testator through his mother, who was a sister of the testator's mother: Finds that the pursuer intimated said bequest to the defender, the proprietor of the holding, on 17th May 1892, and that the defender's agent on 26th May 1892 objected to receive him as crofter in the holding: Finds that, in the circumstances stated, the pursuer is not a member of the same family as the testator within the meaning of section 16 of the Crofters Act (49 and 50 Vict. cap 29), and that the bequest is *quoad* the right to said holding null and void: Therefore sustains the first, third, and eighth pleas-in-law for the defender: Refuses the prayer of the petition.

"*Note.*—The pursuer John Mackenzie here seeks to have it found that he is entitled to a holding at North Ballachulish, on the estate of the defender. This right he claims by virtue of a bequest of the right to the holding granted in his favour by Duncan M'Innes, who was the last crofter in possession of the holding. This bequest was intimated to the defender, who objected to receive the pursuer as a crofter, and after some considerable delay the pursuer has presented the present petition under the Crofters Act (49 and 50 Vict.), section 16, sub-section (*d*). From the facts averred by the parties, it appears that the pursuer's mother was a sister of the testator's mother, and the question which must therefore be determined at the outset is whether such a relationship is one within which this bequest could competently be made. The Crofters Act provides by section 16 that 'a crofter may by will or other testamentary writing bequeath his right to his holding to one person, being a member of the same family—that is to say, his wife or any person who, failing nearer heirs, could succeed to him in case of intestacy,' &c. The right of bequest here given to a crofter for the first time is strictly limited by the statute to the wife or to a particular class of persons—*i.e.*, any person of the same family as the testator who, failing nearer heirs, would succeed in a case of intestacy. The person so favoured must, as stated by Lord M'Laren in *M'Lean* v. *M'Lean*, 18 R. 885 (at page 888), be of the blood of the testator. That the pursuer cannot be said to be. He is not a person who, failing nearer heirs, would succeed in a case of intestacy, and consequently any bequest of a right to a holding of this nature must to that extent be null and void. It was, however, contended for the pursuer that the words of the proviso at the end of this section, 'provided always, that in the case of any legatee or heir-at-law more distant than wife, son, grandson, brother, or son-in-law,' extended the power of bequest to a wider class of persons than those provided for at the beginning of the section, and would embrace all relationship even by affinity. This construction would, however, be repugnant to the rest of the section, and I do not think it necessary to adopt it, as it is manifest that—with the single exception of the son-in-law, in whose case special reasons for favour exist—there

can be persons of the blood of the testator, and entitled to succeed on intestacy, who are yet more distant than those named—*e.g.*, nephews and nieces. The sole effect of the proviso, therefore, is to give to the proprietor a further right of objection in their case which has been denied him in the case of those of nearer degree. Such an interpretation is quite in consonance with the reading of the whole section, and in no way antagonistic to the plainly expressed requisite that the legatee must be the wife of the testator, or a person who, failing nearer heirs, would succeed in intestacy. Since, therefore, the bequest is null and void, any consideration as to whether the holding in question should or should not be added to that of an adjoining crofter is rendered unnecessary."

The pursuer appealed, and argued—*On the competency of the appeal*—The statute provided that the Sheriff's decision was to be final, but that only applied to the case of a reasonable objection to one who had been found entitled under the provisions of the Act to succeed as legatee. Here the question was of the construction of the Act itself, and not merely whether the Sheriff had considered the defender's objection. The words "shall be final" did not in themselves exclude the interlocutor of a sheriff-substitute or magistrate from review—*Wylie, &c.* v. *Kyd, &c.*, May 21, 1884, 11 R. 820; *Edinburgh and Glasgow Railway Company* v. *Earl of Hopetoun*, July 1, 1840, 2 D. 1255. *On the merits*—It was admitted that under the first part of the 16th section of the Crofters Act the pursuer was not entitled to take under this will, but the second part of the section enlarged the scope of the Act, and contemplated that other and more distant relatives than were described in the first part of the section might be nominated by a testator. A person might succeed to a croft although he was not the nearest heir *ab intestato* of the testator at the time of his death—*M'Lean* v. *M'Lean*, June 10, 1891, 18 R. 885.

Counsel for the respondent were not called on.

At advising—

LORD JUSTICE-CLERK — The petitioner here has no case upon the merits of the action; he is not a member of the testator's family.

I confess I feel some doubt as to the competency of this appeal, but with the view I take of the case it is not necessary to decide that question.

LORD YOUNG—The appellant's counsel conceded in the course of the debate that his client could not have any claim to this croft if his right was to be judged by the strict words of the 16th clause of the Crofters Act—that is to say, the appellant is not a person who, failing nearer heirs, would succeed to the testator in case of intestacy. It seems to be the law that while a mother may now succeed to an estate through her son, there can be no succession by a son to the estate of a deceased person through his mother if she has predeceased the person from whom the estate comes. Therefore I consider that the appellant's case does not come under the provisions of the Act unless we think that that position is not conclusive of the matter.

It was argued that the latter part of the section showed that the testator could leave his croft by testamentary writing not only to those who would have succeeded in case of intestacy, but that the word "family" used in the Act must be largely extended so as to include anyone who is connected with him by ties of relationship.

In my opinion we cannot read the statute in that way, and therefore I think the appellant has no claim to this croft.

On the question of whether the Sheriff-Substitute's interlocutor is final on this question, my opinion is that the statute contemplates that the landowner may have some reasonable objection to the person to whom the croft has been bequeathed, if that person is one to whom under the statute the croft may have been legally bequeathed, and in that case the landowner is invited to come before the Sheriff to state his reasonable objection, and the Sheriff's decree on that matter is stated to be final.

My opinion is, however, that if the croft has been bequeathed to a person to whom it could not legally be bequeathed as not being within the relationship prescribed by the Act, the Sheriff could not find that he is within that relationship. If on the other hand the landlord wrongly objected that the person to whom the croft had been bequeathed was not a relation to the testator within the meaning of the Act, I do not think that would be a reasonable ground of objection as comprehended in the statute, or that the Sheriff's decision would be final as regards it.

If that were the case the Sheriff might find that a person who was no relation whatever of the testator was a member of the family to whom the croft had been given, or on the other hand he might find that some near relation, a son of the testator perhaps, and to whom no reasonable person could take objection, ought to be rejected, and in each case his judgment would be final. I do not think that is the meaning of the statute.

It is not necessary for us to decide that question in this case, because, as I have said, it is enough for decision that this appellant has no claim on the croft under the statute.

LORD RUTHERFURD CLARK—With regard to the competency of the appeal I admit I have some doubts, but I do not enter into that question.

It is enough for my decision that I am clear the appellant has not a right to this croft under the provisions of the Crofters Act.

LORD TRAYNER—I am clear that the appellant has no claim to this croft as he is not a member of the family of the testator as defined by the statute.

As regards the competency of the appeal,

it is not necessary for us to decide that question, and it has not been fully argued, but the present inclination of my opinion is against the competency.

The Court pronounced this interlocutor—

"The Lords having heard counsel for the pursuer on the appeal, Dismiss the same, and affirm the interlocutors of the Sheriff, dated 23rd October and 16th November 1893, appealed against, and decern: Of new decern against the pursuer for the sum of £5, 16s, 3d. decerned for in the interlocutor of the Sheriff dated 16th November 1893: Find the defender entitled to expenses in this Court," &c.

Counsel for Appellant—N. J. Kennedy—Greenlees. Agent — James Ross Smith, S.S.C.

Counsel for Respondent—Guthrie—Clyde. Agents—Lindsay, Howe, & Co., W.S.

Tuesday, January 30.

FIRST DIVISION.

STEVENSON *v.* STEVENSON.

Parent and Child—Husband and Wife—Custody of Child — Guardianship of Infants Act 1886 (49 *and* 50 *Vict. c.* 27).

A wife having, on the plea of ill-health, obtained her husband's permission to go on a visit and take her children with her, subsequently refused to return to her husband or deliver the children to him.

In a petition by the husband for delivery and custody of the children, to which the wife lodged answers, the Court *held* (1)—following decisions in *Lang* v. *Lang*, January 30, 1869, 7 Macph. 445; *Steuart* v. *Steuart*, June 3, 1870, 8 Macph. 821—that it was irrelevant in a question of the custody of the children, for the wife to aver that she had been cruelly treated by her husband; and (2) *granted* the petition, in respect that the answers set forth no reasonable ground for apprehending moral or physical injury to the children if their custody was given to the father.

This was a petition by Colonel James Stevenson of Braidwood, in Lanarkshire, for delivery and custody of the children of the marriage between him and Mrs Florence Louisa Gibbs or Stevenson, viz., Samuel, born in May 1886, and Adela and Laura, born in June 1887 and March 1889 respectively.

The petitioner stated that his wife had left his house of Braidwood, taking the three children with her, ostensibly for the purpose of visiting her parents, on 20th March 1893, that she had thereafter, upon entirely unfounded and frivolous grounds, raised a suit against him in the English Courts for judicial separation, and that she had refused to deliver up the children or to return to him except upon condition that she should have the custody and control of the children, which he declined to give her.

Answers were lodged for Mrs Stevenson. She founded on section 1 of the Custody of Children Act 1891, and also on section 5 of the Guardianship of Infants Act 1886, and opposed the petitioner's demand "on the ground that it will endanger the health and morals of the children to award him such custody, and also on the ground that, having regard to the welfare of the said children, to the conduct of the petitioner, and to the wishes of the respondent, it is inexpedient that any order should be pronounced awarding the custody of the children to the petitioner." She further maintained that the petition should be refused "in respect that the petitioner has neglected and taken no interest in the said children, and in particular has allowed them to be brought up by the respondent at her own expense for such a length of time, and under such circumstances as to deprive him of any ground for alleging that he has in any one particular duly discharged his parental duties."

In support of these grounds for opposing the petition the respondent made statements to the following effect—The petitioner had married her as his third wife. His whole available income was swallowed up in supporting the younger children of his first marriage. He had never contributed anything to the support of the respondent or her children. They had been supported out of an allowance of £600 settled on the respondent by her father. Soon after the marriage the petitioner had begun to treat her with cruelty and unkindness, and on certain specified occasions he had used personal violence towards her. In consequence of the petitioner's conduct towards her the respondent had become so ill in 1886 that her mother had insisted on her paying her parents a visit, and she was permitted to do so by the petitioner. She accordingly left her husband's house with her children on 3rd December 1886, and from that time she remained with her children at her parents until 23rd May 1892. During this period the petitioner frequently visited her, but he showed no interest in his children and contributed nothing to their support during this whole time. The respondent's father frequently urged the petitioner to provide a suitable residence for his wife, and as an additional inducement increased the respondent's allowance to a £1000 a-year. The result was that an arrangement was made that the petitioner and respondent should make their residence at Braidwood, and the respondent went there with her children in May 1892. Since then the petitioner had frequently threatened her and used abusive and insulting language towards her, and had on occasions specified treated her with personal violence. He frequently used bad language before his children, and the eldest child had begun to learn the habit. The respondent would have left the petitioner